

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Belmain Realty, Inc. :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the FYE 3/31/80. :
:

State of New York
County of Albany

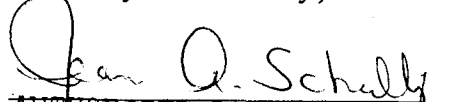
Kathy Pfaffenbach, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of January, 1983, he served the within notice of Decision by certified mail upon Belmain Realty, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

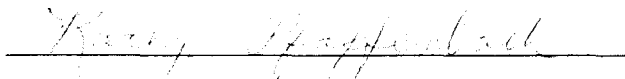
Belmain Realty, Inc.
570 Delaware Ave.
Buffalo, NY 14202

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
10th day of January, 1983.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Belmain Realty, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the FYE 3/31/80. :

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of January, 1983, he served the within notice of Decision by certified mail upon Hyman B. Polakoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyman B. Polakoff
Brock, Schachter & Polakoff
760 Hotel Statler
Buffalo, NY 14202

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
10th day of January, 1983.

John A. Schultz
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Kathy Pfaffenbach

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 10, 1983

Belmain Realty, Inc.
570 Delaware Ave.
Buffalo, NY 14202

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Hyman B. Polakoff
Brock, Schachter & Polakoff
760 Hotel Statler
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BELMAIN REALTY, INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Corporation Franchise Tax under :
Article 9-A of the Tax Law for the Fiscal Year :
Ended March 31, 1980. :

Petitioner, Belmain Realty, Inc., 570 Delaware Avenue, Buffalo, New York, 14202 filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal year ended March 31, 1980 (File No. 33098).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Part I, Buffalo, New York on July 15, 1982 at 9:15 A.M. Petitioner appeared by Brock, Schechter & Polakoff, CPA's., (Hyman B. Polakoff, CPA). The Audit Division appeared by Paul B. Coburn, Esq., (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether penalties asserted against petitioner pursuant to section 1085 of the Tax Law for alleged late filing of a Corporation Franchise Tax Report may be waived.

FINDINGS OF FACT

1. On January 19, 1981, the Audit Division issued to petitioner, Belmain Realty, Inc. ("Belmain"), a Notice and Demand for Payment of Corporation Tax Due for the fiscal year ended March 31, 1980, in the amount of \$7,418.00, plus interest of \$307.97 and additional charge of \$1,433.60, for a total of \$9,159.57.

This notice showed an amount paid of \$7,418.00, thus leaving interest and additional charge of \$1,741.57 unpaid and asserted as due.

2. As stated on the Notice, the above-asserted interest and additional charge were based on alleged late filing of petitioner's corporation franchise tax report for the fiscal year ended March 31, 1980, and late payment of the tax shown as due thereon. The Notice stated petitioner's report was due to be filed by June 15, 1980, but was not received by the Audit Division until December 17, 1980.

3. At the hearing, petitioner, by its representative, conceded and does not contest the amount of interest (\$307.97) asserted as due by the Audit Division. However, the additional charge for alleged late filing is not conceded by petitioner and remains at issue herein.

4. On June 13, 1980, petitioner filed an "Application For 3 Month Extention For Filing Tax Report" (Form CT-5), which was signed on behalf of petitioner by one Eugene Bellis, under the title of Secretary. This application showed an amount payable of \$250.00, which was (presumably) equal to petitioner's tax liability for the preceding fiscal year ended March 31, 1979.

5. Petitioner's Corporation Franchise Tax Report (Form CT-3) filed for the fiscal year ended March 31, 1980, was dated December 15, 1980 and was received by the Audit Division on December 17, 1980. This report was signed on behalf of petitioner by one Samuel Golden, under the title of Secretary.

6. Petitioner reported, on the above franchise tax report, a total tax (at line "8") of \$7,418.00. The report reflected a prepaid amount (at line "9") of \$250.00, and showed a balance due of \$7,168.00. The Notice and Demand issued to petitioner on January 19, 1981, showed an amount paid by petitioner of \$7,418.00, which presumably reflects \$250.00 paid with petitioner's application

for the extension of time within which to file, and \$7,168.00 paid with the filing of petitioner's report.

7. On June 13, 1980, and again on September 12, 1980, Benderson Development Company, Inc., filed applications for three month extensions of the time within which to file its United States Corporation Income Tax Return. Both of these applications were signed by Eugene Bellis, under the title of Vice-President.¹

8. Petitioner filed no subsequent applications or other requests with the Audit Division for further extension of the time within which to file its New York State Corporation Franchise Tax Report beyond the September 15, 1980 due date as requested in its original application for extension (see Finding of Fact "4").

9. Petitioner asserts, as constituting reasonable cause for failure to timely file its franchise tax report for the fiscal year ended March 31, 1980, the following grounds:

- a. that a Federal audit of some members of the group of corporations with which petitioner was affiliated occupied the time and attention of those persons, particularly Eugene Bellis, charged with the responsibility of filing tax reports, applications for extensions, etc., on behalf of petitioner;
- b. that personnel then recently hired and being trained by petitioner were unaware of any requirement for filing additional requests for extension subsequent to the original application;
- c. that petitioner was operating under the "misapprehension" that filing the original application for extension (Form CT-5) and subsequently filing requests for additional extension with the Internal Revenue Service only, was sufficient to extend the due date for filing petitioner's

¹ The applications for extension were filed by Benderson Development Company, Inc. on behalf of a group of affiliated corporations (listed on the applications) including petitioner.

New York State Franchise Tax Report. Petitioner acknowledges the foregoing does not conform to the proper procedure for securing an extension of time for filing such reports.

CONCLUSIONS OF LAW

A. That pursuant to section 211.1 of the Tax Law and regulations thereunder, petitioner's tax report for the fiscal year ended March 31, 1980 was due to be filed on or before June 15, 1980, unless on or before that date petitioner filed an application for extension of the time within which to file its report and paid on or before such filing an amount properly estimated as its tax (20 NYCRR 6-4.4).

B. That Regulations of The State Tax Commission provide:

"Properly estimated tax. (Tax Law, 213, subd. 1)(a) A taxpayer applying for an automatic three month extension for filing its tax report must pay on or before the date its report is required to be filed, without regard to any extension or time, its properly estimated tax. The estimated tax paid, or balance thereof, will be deemed properly estimated if the tax paid is either:

(1) not less than 90 percent of the tax as finally determined or

(2) not less than the tax shown on the taxpayer's report for the preceding taxable year, if such preceding year was a taxable year of 12 months. (20 NYCRR 7-1.3)."

C. That petitioner did file a timely initial application for extension, with which petitioner paid an amount (\$250.00) properly estimated as its tax in accordance with the requirements of 20 NYCRR 6-4.4 and 20 NYCRR 7-1.3(2). Accordingly, petitioner's franchise tax report for the fiscal year ended March 31, 1980, was not due to be filed until September 15, 1980.

D. That regulations of the State Tax Commission in pertinent part further provide:

"(c) On or before the expiration of the automatic three (3) month extension, the Tax Commission may grant additional three (3) month extensions of time for filing reports when good

cause exists. Applications for additional three (3) month extensions must be made in writing before the expiration of the previous three month extension...The application must include the following information:

- (1) the taxpayer's complete name,
- (2) the taxpayer's employer identification number,
- (3) the taxpayer's file classification number, and
- (4) the reason for requesting the additional extension."

20 NYCRR 6-4.4(c) (emphasis added).

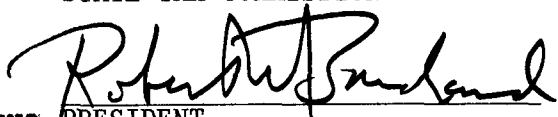
E. That petitioner did not properly secure any additional extension of the time within which to file its franchise tax report beyond the September 15, 1980 (extended) due date. Furthermore, in view of the procedure for obtaining additional extensions, as clearly specified in 20 NYCRR 6-4.4(c), the grounds advanced by petitioner in Finding of Fact "9" do not constitute reasonable cause sufficient to allow waiver of the additional charge imposed for late filing. However, said additional charge may only be imposed from the September 15, 1980 (extended) due date until the date the return was filed.

F. That the petition of Belmain Realty, Inc. is granted to the extent indicated in Conclusion of Law "E", but is in all other respects denied. The Audit Division is directed to recompute the additional charge reported on the Notice and Demand dated January 19, 1981, in accordance herewith, and the Notice and Demand, as recomputed, is sustained.


DATED: Albany, New York

JAN 10 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER